

Salim vs State of Kerala

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Court : Kerala Orders

Decided On : Aug-12-2021

Judge : Honourable Mrs. Justice Shircy V.

Appeal No. : Bail Appl./4401/2021

Appellant : SALIM

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MRS. JUSTICE SHIRCY V. THURSDAY, THE 12TH DAY OF AUGUST 2021 / 21ST SRAVANA, 1943 BAIL APPL. NO. 4401 OF 2021 (CRIME NO.75 OF 2021 OF ANTHIKKAD POLICE STATION) PETITIONER SALIM AGED 36 YEARS S/O.ALI MUHAMMED, MUSLIAN VEETIL, PERUMBILAVU P.O., KARIKKAD, THRISSUR DISTRICT, PIN - 680 519. BY ADV ABRAHAM MATHAN RESPONDENTS/DEFACTO COMPLAINANT 1 STATE OF KERALA REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM - 682 031. 2 SHAFEEDA AGED 36 YEARS D/O.BASHEER, PANIKKAVEETIL, KURUMBILAVU, PAZHUVIL DESOM, PAZHUVIL P.O., THRISSUR DISTRICT, PIN - 680 564. BY

ADV SRUTHY N. BHAT OTHER PRESENT: C.N.PRABHAKARAN-SR.P.P THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 10.08.2021, THE COURT ON 12.08.2021 DELIVERED THE FOLLOWING: B.A.No.4401 of 2021 2

ORDER

Apprehending arrest in connection with Crime No.75 of 2021 of Anthikkad Police Station registered for the offences punishable under S.406 and 420, 376(1), 376(2) f, n of the IPC, the petitioner has moved this application under Sec.438 of the Code of Criminal Procedure.

2. The prosecution case in brief is as follows: The petitioner had got acquaintance with the defacto complainant, a

lady who was working abroad. He with the intention to cheat her, had received in total an amount of Rs.20 lakhs on various days from the month of February, 2016 till 26.1.2021 and had obtained her ATM card as well her car bearing No.KL-08-BQ 5650, but did not return the same as promised to her. He has also committed rape on her on various days by taking her to a lodge at Thrissur and Guruvayoor under the pretext that he would marry her. But after misappropriating her money he had

deviated from his promise and thereby he also committed criminal breach of trust and cheating.

3. The learned counsel for the petitioner has raised a plea of false implication and further submitted that he is totally innocent of the allegations leveled against him. There was some money transaction B.A.No.4401 of 2021 3

between the petitioner and the second respondent. But he repaid the entire amount received by him. The car which was taken by him had also been returned to her. He has not sexually abused the defacto complainant as alleged by her. Still he apprehends arrest and hence, the petition.

4. The learned Public Prosecutor vehemently opposed the application and submitted the CD file for perusal.

5. Heard the learned counsel for the petitioner as well the learned Public Prosecutor.

6. The defacto complainant is a divorcee working abroad. She was

working as a Software Engineer at Muscat. The petitioner was running a travel agency in Dubai. The petitioner and the defacto complainant got acquaintance through Facebook in the month of February 2016. At that time, he was facing so much financial crisis. He collected money from her making her to believe that he would marry her after getting divorce from his wife. Believing his words, the defacto complainant had parted money mainly by way of account transfer. Thus, she had given more than a sum of Rs.20 lakhs to the petitioner. He has also collected her ATM card and also a car which belonged to her friend bearing Reg.No.KL-08- BQ-5650. It is also revealed from the records that he promised to marry B.A.No.4401 of 2021 4 her and had even collected money from her to purchase dress materials required for him for the marriage and reception. His promise was to marry her early 2021 and he has obtained a consent letter from the Juma-ath Perumpilavu so as to appear that he had made all

arrangements to marry her on 26.1.2021. There by the defacto complainant had made arrangements for the reception for the guests who are intending to attend the marriage ceremony on 26.1.2021. She had spent more than a sum of Rs.2 lakhs for making arrangement at her residence for the marriage as well for the purchase of dress materials.

While he was waiting for the marriage and for arrival of the bridegroom/the petitioner at about 10 a.m on 26.1.2021 she received a call from his brother in law to the effect that he is found missing from his residence. Thus the petitioner had cheated the defacto complainant after receiving so much money and exploiting her sexually.

7. The CD file would further reveal that on various days he had taken her to a lodge at Guruvayoor and Thrissur by booking rooms in his

name and subjected her to sexual assault and thereby, he had committed sexual harassment including rape apart from the offence of cheating. The deliberate intention to exploit her sexually appears to be prima facie true. The records would reveal that he had misappropriated B.A.No.4401 of 2021 5 her money under the pretext that he would marry her. Major portion of the amount thus collected by him on various days were transferred from her account maintained in South Indian Bank, Peringottukara into his account at Federal Bank, Perumpilavu . Apart from that he had also collected her ATM card and taken money by using the same under the false promise that he would marry her after divorcing his wife.

8. The materials so far collected by the investigating officer would

show that he deliberately cheated the defacto complainant and extracted money from her. As the transactions were through bank and money exchange and as well by using ATM card and the total amount thus collected on various days comes to more than 20 lakhs, definitely custodial interrogation of this petitioner is required. The transaction between the parties in fact started in the year 2016 and ended till registration of the crime on 1.2.2021. The allegations levelled against this petitioner are grave and serious in nature and no doubt custodial

interrogation is required to collect the entire materials for the investigation of the case. Furthermore he took her to different hotels after booking the hotels by himself . Such being the scenario, if the petitioner is granted pre-arrest bail,the investigating agency could not collect the entire materials which would definitely affect the case B.A.No.4401 of 2021 6 adversely . The possibility to flee from justice causing obstacles to the smooth progress of investigation and influencing the witnesses by using the money power etc cannot be ruled out. Hence, I find that this is not a fit case in which discretion of this

court can be extended, exercising the jurisdiction under Sec.438 which is supposed to be applied only sparingly and judicially in deserving cases. No doubt, this is not at all a case in which the discretion can be applied in favour of the

petitioner as requested. Hence, the bail application is dismissed. The petitioner shall surrender before the investigating officer and co-operate with the investigation of the case or the investigating officer has to arrest him at the earliest

Sd/- SHIRCY V JUDGE smm

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